HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

W.P. NO.16492 of 1996

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Between:
Neerla Yellaiah

.....Petitioner

AND

Government of Andhra Pradesh represented by
its Secretary, Department of Revenue,
Secretariat, Hyderabad and 2 others.

.....Respondents

::ORDER::

Counsel for the Petitioner : Sri L.Prabhaker Reddy

Counsel for Respondents : Government Pleader for

Assignment

Dated 12/7/2006

Almost 36 years ago, a Full Bench of Gujarat High Court speaking through P.N.Bhagwati, J (as his lordship then was) described a non-speaking order as 'inscrutable face of a sphinx' and held that it is the duty of every quasi-judicial authority to record reasons and communicate the same to the affected person – **Testeels Limited v. N.M.Desai**[1]. The relevant extracts of that judgment are reproduced below:

> "There are two strong and cogent reasons why we must insist that every quasi-judicial order must disclose reasons in support of it. The necessity of giving reasons flows as a necessary corollary from the rule of law which constitutes one of the basic principles of our constitutional set-up. Our Constitution posits a welfare State in which every citizen must have justice—social, economic and political and in order to achieve the ideal of welfare State, the State has to perform several functions involving acts of interferences with the free and unrestricted exercise of private rights. The State is called upon to regulate and control the social and economic life of the citizen in order to establish socio-economic justice and remove the existing imbalance in the socio-economic structure. The State has, therefore, necessarily to entrust diverse functions to administrative authorities which involve making of orders and decisions and performance of acts affecting the rights of individual members of the public. In exercise of some these functions, the administrative authorities are required to act judicially. Now what is involved in a judicial process is well settled and as pointed out by Shah J. in Jaswant Sugar Mills's case, AIR 1963 SC 677 supra, a quasi-judicial decision involves the following three elements:
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> (1) It is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rules;
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> (2) It declares rights or imposes upon parties obligations affecting their civil rights; and
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> (3) The investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of material if a dispute be on question of fact, and if the dispute be on question of law, on the presentation, of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact.

Another reason of equal cogency which weighs with us in spelling out the necessity for giving reasons is based on the power of judicial review which is possessed by the High Court under Article 226 and the Supreme Court under Article 32. The High Court under Article 226 and the Supreme Court under Article 32 have the power to quash by certiorari a quasi-judicial order made by an administrative officer and this power of review exercisable by issue of certiorari can be effectively exercised only if the order is a speaking order and reasons are given in support of it. If no reasons are given, it would not be possible for the High Court or the Supreme Court exercising its power of judicial review to examine whether the administrative officer has made any error of law in making the order. It would be the easiest thing for an administrative officer to avoid judicial scrutiny and correction by omitting to give reasons in support of his order. The High Court and the Supreme Court would be powerless to interfere so as to keep the administrative officer within the limits of the law. The result would be that the power of judicial review would be stultified and no redress being available to the citizen, there would be insidious encouragement to arbitrariness and caprice. The power of judicial review is a necessary concomitant of the rule of law and if judicial review is to be made an effective instrument for maintenance of the rule of law, it is necessary that administrative officers discharging quasi-judicial functions must be required to give reasons in support of their orders so that they can be subject to judicial scrutiny and correction."

The Supreme Court in **Harinagar Sugar Mills v. Shyam Sundar**[2], **M.P.Industries Limited v. Union of India**[3], **Bhagat Raja v. Union of India**[4], **Mahavir Prasad Santoshkumar v. State of U.P.**[5], **Travancore Rayons v. UOI**[6], **Messrs Ajanta Industries v. Central Board of Direct Taxes, New Delhi**[7], **Messrs Siemens Engineering & Manufacturing Company v. Union of India**[8], **S.N. Mukherjee v. Union of India**[9], **Charan Singh v. Healing Touch Hospital**[10] **State of Punjab v. Bagh Singh**[11], **State of Orissa v. Dhaniram Luhar**[12], **State of Rajasthan**

v . Sohan Lal[13], **Cyril Lasrado v. Juliana Maria Lasrado**[14], **Mangalore Ganesh Beedi Works v. CIT**[15] and **Manorama Sachan v. Lucknow Development Authority**[16] reiterated the requirement of recording reasons by judicial, quasi-judicial and administrative authorities and communication thereof to the affected persons. In **S.N. Mukherjee v. Union of India** (supra) the Constitution Bench of the Supreme Court noticed the legal position obtaining in Australia, England, United States of America, referred to a large number of judicial precedents on the subject and laid down the following proposition:

> "… Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U. S. A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case."

In **State of Punjab v. Bagh Singh** (supra) the Supreme Court observed:

> "Reasons introduce clarity in an order. Reasons substitute

subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

In **State of Rajasthan v. Sohan Lal**[12] (supra) the Supreme Court while dealing with the question whether the High Court was required to assign reasons for recording reasons while disposing of petitions filed under Section 378 (3) Cr.P.C. observed:

"The hallmark of a judgment/order and exercise of judicial power by a judicial forum is to disclose the reasons for its decision and giving of reasons has been always insisted upon as one of the fundamentals of sound administration justice-delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. … The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know of the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind. All the more so, when refusal of leave to appeal has the effect of foreclosing once and for all a scope for scrutiny of the judgment of the trial court even at the instance and hands of the first appellate court. …"

In **Cyril Lasrado v. Juliana Maria Lasrado**[13] (supra) the Supreme Court considered the same question and held as under:

"… Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound

> judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

It is unfortunate that despite repeated pronouncements of the Courts across the country, the executive authorities entrusted with the task of deciding some lis between the parties or passing an order which visits a person with civil consequences or adversely affect his rights exhibit consistency in passing non-speaking orders. This compels the aggrieved person to seek intervention of the Court by filing petitions under Article 226 of the Constitution.

The order impugned in this petition is the one passed by Sub-Collector, Jagityal (respondent No.2) on 30.7.1996 whereby he cancelled the patta certificate issued to the petitioner in respect of Ac.5.00 of land comprised in Survey No.168, Bancharai, Sircilla Village and Mandal. A perusal of the record shows that the land in question was assigned to the petitioner some time in 1992 and patta certificate was also issued in his favour. After about four years, respondent No.2 issued show cause notice dated 14.6.1996 proposing to cancel the patta certificate issued to the petitioner on the ground that he was not eligible for assignment because his wife was in possession of house bearing No.9-6-39/1-2-3 situated in Kareemnagar. In his reply dated 10.7.1996, the petitioner controverted the allegation that the assignment made in his favour was illegal and submitted that the house standing in the name of his wife had been built by her brother and he did not own any property on the date of assignment.

If respondent No.2 had adverted to the reply filed by the petitioner on merits, and passed a reasoned order, this Court would have been extremely reluctant to interfere with the impugned order, but the fact of the matter is that the impugned order is totally devoid of reasons and is, therefore, liable to be declared as vitiated due to violation of the rules of

natural justice. Respondent No.2 rejected the detailed reply of the petitioner by using the stock phrase “not satisfactory” and cancelled the patta certificate. In my view, the failure of respondent No.2 to pass a reasoned order reflecting the application of mind to the points raised by the petitioner in his reply calls for invalidation of the impugned order.

In the result, the writ petition is allowed. Order dated 30-7-1996 passed by respondent No.2 is quashed. However, liberty is given to the said respondent to pass fresh order in accordance with law.

G.S.SINGHVI, CJ

12-07-2006

svs

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[1] AIR 1970 Gujarat 1
[2] AIR 1961 SC 1669
[3] AIR 1966 SC 671
[4] AIR 1967 SC 1606
[5] AIR 1970 1302
[6] AIR 1971 SC 862
[7] AIR 1976 SC 437
[8] AIR 1976 SC 1785
[9] AIR 1990 SC 1984
[10] (2000) 7 SCC 668
[11] (2004) 1 SCC 547
[12] (2004) 5 SCC 568
[13] (2004) 5 SCC 573
[14] (2004) 7 SCC 431
[15] (2005) 5 SCC 75
[16] (2005) 9 SCC 425